

States". The words "mailing of official matter" are substituted for the words "transmission of official mail matter".

§ 714. Final settlement of accounts: deceased members

(a) In the settlement of the accounts of a member of the National Guard who dies after December 31, 1955, an amount due from the armed force of which he was a member shall be paid to the person highest on the following list living on the date of death:

(1) Beneficiary designated by him in writing to receive such an amount, if the designation is received, before the deceased member's death, at the place named in regulations to be prescribed by the Secretary concerned.

(2) Surviving spouse.

(3) Children and their descendants, by representation.

(4) Father and mother in equal parts or, if either is dead, the survivor.

(5) Legal representative.

(6) Person entitled under the law of the domicile of the deceased member.

(b) Designations and changes of designation of beneficiaries under subsection (a)(1) are subject to regulations to be prescribed by the Secretary concerned. So far as practicable, these regulations shall be uniform with those prescribed for the armed forces under section 2771(b) of title 10.

(c) Under such regulations as the Secretary concerned may prescribe, payments under subsection (a) shall be made by the Department of the Army or the Department of the Air Force, as the case may be.

(d) A payment under this section bars recovery by any other person of the amount paid.

(Added Pub. L. 85-861, §2(12), Sept. 2, 1958, 72 Stat. 1546; amended Pub. L. 87-46, June 16, 1961, 75 Stat. 92; Pub. L. 104-316, title II, §202(q), Oct. 19, 1996, 110 Stat. 3844.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
714(a)	37:361. 37:362. 37:365.	July 12, 1955, ch. 328, §§1-3, 4 (less proviso), 5 (1st sentence), 69 Stat. 295, 296.
714(b)	37:364 (less proviso).	
714(c)	37:363 (less last sentence).	
714(d)	37:363 (last sentence).	

In subsection (a), the definition of the term "Department", in 37:361, is omitted as unnecessary, since the particular departments referred to are spelled out in the revised text. The definition of the term "uniformed services", in 37:361, is omitted as covered by the word "member" in this revised section. Clauses (1)-(6) are substituted for the last 5 clauses of 37:362. The words "regulations to be prescribed by the Secretary concerned" are substituted for the words "regulations of the Department concerned", since the "Department", as such, cannot issue regulations.

In subsection (a)(2), the words "Surviving spouse" are substituted for the words "widow or widower". As defined in section 101(18) of this title, "spouse" includes a widower.

In subsection (b), the words "are subject to" are substituted for the words "shall be made under".

In subsection (c), the word "Under" is substituted for the words "Subject to". The words "rules and" are omitted as surplusage.

AMENDMENTS

1996—Subsec. (c). Pub. L. 104-316, in first sentence, substituted "Secretary concerned" for "Comptroller General" and struck out at end "Payment under clause (6) of subsection (a) shall be made—

"(1) upon settlement by the General Accounting Office; or

"(2) as otherwise authorized by the Comptroller General."

1961—Subsec. (c). Pub. L. 87-46 substituted "Payment under clause (6) of subsection (a) shall be made—

"(1) upon settlement by the General Accounting Office; or

"(2) as otherwise authorized by the Comptroller General."

for "Payments under clauses (2)-(6) of subsection (a) may be paid only after settlement by the General Accounting Office."

DESIGNATION OF BENEFICIARY MADE BEFORE JANUARY 1, 1956

Designation of beneficiary made before Jan. 1, 1956, considered as the designation of a beneficiary for the purposes of this section, see note set out under section 2771 of Title 10, Armed Forces.

§ 715. Property loss; personal injury or death: activities under certain sections of this title

(a) Under such regulations as the Secretary of the Army or Secretary of the Air Force may prescribe, he or, subject to appeal to him, the Judge Advocate General of the armed force under his jurisdiction, if designated by him, may settle and pay in an amount not more than \$100,000 a claim against the United States for—

(1) damage to, or loss of, real property, including damage or loss incident to use and occupancy;

(2) damage to, or loss of, personal property, including property bailed to the United States or the National Guard and including registered or insured mail damaged, lost, or destroyed by a criminal act while in the possession of the National Guard; or

(3) personal injury or death; either caused by a member of the Army National Guard or the Air National Guard, as the case may be, while engaged in training or duty under section 316, 502, 503, 504, or 505 of this title or any other provision of law for which he is entitled to pay under section 206 of title 37, or for which he has waived that pay, and acting within the scope of his employment; or otherwise incident to noncombat activities of the Army National Guard or the Air National Guard, as the case may be, under one of those sections.

(b) A claim may be allowed under subsection (a) only if—

(1) it is presented in writing within two years after it accrues, except that if the claim accrues in time of war or armed conflict or if such a war or armed conflict intervenes within two years after it accrues, and if good cause is shown, the claim may be presented not later than two years after the war or armed conflict is terminated;

(2) it is not covered by section 2734 of title 10 or section 2672 of title 28;

(3) it is not for personal injury or death of such a member or a person employed under section 709 of this title, whose injury or death is incident to his service;

(4) the damage to, or loss of, property, or the personal injury or death, was not caused wholly or partly by a negligent or wrongful act of the claimant, his agent, or his employee, or, if so caused, allowed only to the extent that the law of the place where the act or omission complained of occurred would permit recovery from a private individual under like circumstances; and

(5) it is substantiated as prescribed in regulations of the Secretary concerned.

For the purposes of clause (1), the dates of the beginning and end of an armed conflict are the dates established by concurrent resolution of Congress or by a determination of the President.

(c) Payment may not be made under this section for reimbursement for medical, hospital, or burial services furnished at the expense of the United States or of any State or the District of Columbia or Puerto Rico.

(d) If the Secretary concerned considers that a claim in excess of \$100,000 is meritorious, and the claim otherwise is payable under this section, the Secretary may pay the claimant \$100,000 and report any meritorious amount in excess of \$100,000 to the Secretary of the Treasury for payment under section 1304 of title 31.

(e) Except as provided in subsection (d), no claim may be paid under this section unless the amount tendered is accepted by the claimant in full satisfaction.

(f) Under regulations prescribed by the Secretary concerned, an officer or employee under the jurisdiction of the Secretary may settle a claim that otherwise would be payable under this section in an amount not to exceed \$25,000. A decision of the officer or employee who makes a final settlement decision under this section may be appealed by the claimant to the Secretary concerned or an officer or employee designated by the Secretary for that purpose.

(g) Notwithstanding any other provision of law, the settlement of a claim under this section is final and conclusive.

(h) In this section, "settle" means consider, ascertain, adjust, determine, and dispose of a claim, whether by full or partial allowance or disallowance.

(Added Pub. L. 86-740, §1(1), Sept. 13, 1960, 74 Stat. 878; amended Pub. L. 87-649, §8(b), Sept. 7, 1962, 76 Stat. 495; Pub. L. 90-486, §2(3), Aug. 13, 1968, 82 Stat. 756; Pub. L. 90-525, §6, Sept. 26, 1968, 82 Stat. 878; Pub. L. 91-312, §3, July 8, 1970, 84 Stat. 412; Pub. L. 92-445, Sept. 29, 1972, 86 Stat. 745; Pub. L. 93-336, §3, July 8, 1974, 88 Stat. 292; Pub. L. 98-564, §4, Oct. 30, 1984, 98 Stat. 2919; Pub. L. 104-316, title II, §202(r), Oct. 19, 1996, 110 Stat. 3844.)

AMENDMENTS

1996—Subsec. (d). Pub. L. 104-316 substituted "Secretary of the Treasury" for "Comptroller General".

1984—Subsec. (a). Pub. L. 98-564, §4(1), substituted "\$100,000" for "\$25,000".

Subsec. (d). Pub. L. 98-564, §4(2), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "If the Secretary of the military department concerned considers that a claim in excess of \$25,000 is meritorious and would otherwise be covered by this section, he may pay the claimant \$25,000 and report the excess to Congress for its consideration".

Subsec. (f). Pub. L. 98-564, §4(3), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: "In any case where the amount to be paid is not more than \$5,000, the authority contained in subsection (a) may be delegated to any officer of the Army or the Air Force, as the case may be, who has been delegated authority under section 2733(g) of title 10, to settle similar claims, subject to appeal to the Secretary concerned, or his designee for that purpose".

1974—Subsecs. (a), (d). Pub. L. 93-336, §3(1), (2), substituted "\$25,000" for "\$15,000".

Subsec. (f). Pub. L. 93-336, §3(3), substituted "\$5,000" for "\$2,500".

1972—Subsec. (b)(4). Pub. L. 92-445 inserted provision that claim may be allowed to extent that law of place where act or omission complained of occurred would permit recovery from a private individual under similar circumstances, when damage to or loss of property, or personal injury or death was caused wholly or partly by a negligent or wrongful act of claimant, his agent, or his employee.

1970—Subsecs. (a), (d). Pub. L. 91-312 substituted "\$15,000" for "\$5,000".

1968—Subsec. (a). Pub. L. 90-486 struck out "caused by a person employed under section 709 of this title acting within the scope of his employment;" after "acting within the scope of his employment;".

Subsec. (f). Pub. L. 90-525 increased limitation on amount of settlement from \$1,000 to \$2,500 and provided for appeals to Secretary concerned, or his designee, from determinations delegating authority to settle claims to an officer of the Army or the Air Force.

1962—Subsec. (a)(3). Pub. L. 87-649 substituted "section 206 of title 37" for "section 301 of title 37".

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-486 effective Jan. 1, 1968, except that no deductions or withholding from salary which result therefrom shall commence before the first day of the first pay period that begins on or after Jan. 1, 1968, see section 11 of Pub. L. 90-486, set out as a note under section 709 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-649 effective Nov. 1, 1962, see section 15 of Pub. L. 87-649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

SAVINGS PROVISION FOR CLAIMS ARISING BEFORE JANUARY 1, 1969

Settlement and payment of claims arising under this section before January 1, 1969, see section 3(a) of Pub. L. 90-486, set out as a note under section 709 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 2736; title 31 section 1304.

§ 716. Claims for overpayment of pay and allowances, and travel and transportation allowances

(a) A claim of the United States against a person arising out of an erroneous payment of any pay or allowances made before, on, or after October 2, 1972, or arising out of an erroneous payment of travel and transportation allowances, to or on behalf of a member or former member of the National Guard, the collection of which would be against equity and good conscience and not in the best interest of the United States, may be waived in whole or in part by—

(1) the Director of the Office of Management and Budget; or

(2) the Secretary concerned, as defined in section 101(5) of title 37, when—